

BAIL SLIP

The Appellant/Accused namely Chinnaperumal, aged about S/o.Chenngounder, was directed to be released on bail as per order of this Court dated 31.03.2016 in Crl.MP.NO.2400 of 2016 in Crl.A.NO.174/2016.

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.174 of 2016

Chinnaperumal ... Appellant/Accused

- Vs -

State rep by Inspector of Police,
Hogenakkal Police Station,
Dharmapuri District.
(Cr.No.81 of 2011) ... Respondent/Complainant

Prayer:- Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned Sessions Judge, Mahalir Fast track Court, Dharmapuri in S.C.No.94 of 2014 dated 19.02.2016.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

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J U D G M E N T

(Judgment of the Court was delivered by S.Nagamuthu, J.)

The appellant is the sole accused in S.C.No.94 of 2014 on the file of the learned Sessions Judge, Mahalir Fast track Court, Dharmapuri. He stood charged for offences under Sections 302 and 379 I.P.C. By judgment dated 19.02.2016, the trial Court convicted him under both the charges and sentenced him to undergo imprisonment for life and pay a fine of Rs.2,000/- in default to undergo rigorous imprisonment for two months for

offence under Section 302 I.P.C. and to undergo rigorous imprisonment for one year and pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for one month for the offence under Section 379 I.P.C. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

2. The case of the prosecution in brief is as follows:

2.1. The deceased in this case was one Mrs.Madhammal. Mrs. Madhammal's husband was one Mr.Rangasamy. The accused is the brother of Mr.Rangasamy. In respect of selling of a common property between them, there arose misunderstanding, which culminated into enmity between the two families. This is stated to be the motive for the occurrence.

2.2. It is alleged that on 09.04.2011 around 07.45 a.m. the deceased went to the field taking the buffaloes for grazing. Normally, she would have returned by 09.00 a.m. But on that day, she did not return so. P.W.1 is the sister's son of the deceased. He along with the others, therefore, went in search of the deceased around 01.00 p.m. After hectic search for the deceased, at last they found the dead body of the deceased lying by the side of a bush. There were cut injuries on her body. They brought the dead body to the house. They found the thali chain and a pair of ear studs worn by the deceased missing. Thereafter, P.W.1 went to Hogenakkal police station and made a complaint at 08.00 p.m. on 09.04.2011.

2.3. P.W.19, the then Inspector of Police on receipt of the said complaint registered a case in Crime No.81 of 2011 under Sections 302 and 392 I.P.C. Ex.P8 is the F.I.R. He forwarded the complaint and the F.I.R. to the Court, which was received by the learned Magistrate at 09.45 p.m. on 09.04.2011.

2.4. P.W.19 took up the case for investigation. He went to the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of P.W.14 and another witness. He recovered bloodstained earth and sample earth from the place of occurrence. He forwarded the body to the hospital for being kept in the mortuary. On the next day between 07.45 a.m. to 10.00 a.m. he conducted inquest on the body of the deceased and then he forwarded the body for postmortem.

2.5. P.W.15 Dr.Malathi conducted autopsy on the body of the deceased on 10.04.2011 at 12.00 noon and she found the following injuries:

“Injuries: 6x4x bone deep injury on the right peritoneal region. Contusion seen on both eyes. Contusion seen on the neck, chest region and Hyoid bone. Opening of chest-

sternum ribs 2,4 and 5th rib fracture on the right side. 2, 3, 4 and 6th rib fracture on the left side of lungs and heart. Stomach contains 100 gms of partially digested food. Intestine, kidney, liver, spleen normal. Bladder normal, genitals normal. Skull fracture on the peritoneal region. Brain - hemorrhage on the right peritoneal region."

Ex.P6 is the postmortem certificate. She gave opinion that the death of the deceased was due to shock and hemorrhage due to the injuries found on the body of the deceased.

2.6. P.W.19 arrested the accused on 24.04.2011 at 01.00 p.m. in the presence of P.W.11 and another witness. On such arrest, he made a voluntary confession in which he disclosed the place where he had hidden a stone and a rope. P.W.19 recovered the same under a mahazar. In the said disclosure statement, the accused informed that he had pledged a gold Thali and the ear studs at the Pawn Broker shop of one Suresh Kumar. Accordingly, he identified P.W.12 from whom M.Os.3 and 4 were recovered. On returning to the police station, he forwarded the accused to the Court for judicial remand. At his request, the material objects were sent for chemical examination. On completing the investigation, he laid chargesheet against the accused.

2.7. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment, which the accused denied. In order to prove the case, on the side of the prosecution as many as 19 witnesses were examined, 16 documents and 6 material objects were marked.

2.8. Out of the said witnesses, P.W.1-the sister's son of the deceased, has stated that the deceased went to the field at 07.15 a.m. on the day of occurrence and the dead body of the deceased was found at 01.00 p.m. He has also spoken about the complaint made. P.W.2 is the son of the deceased. He has also stated that the deceased went to the field at around 07.00 a.m. but did not return. On that day, he was not at his home. Later, he came to know that his mother was no more. P.W.3, is a close relative of the deceased. He has also stated about the same facts as spoken by P.W.1. P.W.4 is yet another close relative, he has stated that he accompanied P.W.1 and found the dead body.

2.9. P.W.5 is the daughter of the deceased. She has stated that she came to know about the death of the deceased later. P.W.6 is the wife of P.W.2, she has also stated that she found the dead body in the field. P.W.7, is yet another close relative of the deceased. She has also stated the same facts that she found the dead body in the field. P.W.8 a villager has spoken only on hearsay information. P.W.9 has turned hostile and he has not supported the case of the prosecution in any manner.

2.10. P.W.10 is the brother's son of the accused. He has spoken about the enmity between the family of the deceased and the accused. P.W.11-the Village Administrative Officer has stated about the arrest of the accused and the consequential recoveries of the material objects. P.W.12 has stated that he was running a jewelry shop under the name and style 'S.S.Lokesh Jewelry'. He knew the accused and according to him, the accused once came and pledged M.Os.3 and 4 for a sum of Rs.3,000/- and after 10 or 15 days, police came and recovered the same. P.Ws.13 and 14 have also turned hostile and they have not supported the case of the prosecution in any manner.

2.11. P.W.15 has spoken about the postmortem conducted and her final opinion regarding the cause of death. P.W.16 has spoken about the preparation of the observation mahazar and the rough sketch and recovery of bloodstained earth and sample earth from the place of occurrence. P.W.17 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.18 has stated that he accompanied P.W.1 in search of the deceased. P.W.19 has spoken about the registration of the case, investigation done and the final report filed.

3. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness nor to mark any document. Having considered all the above, the trial Court convicted the accused as detailed in the first paragraph of this judgment and that is how, he is before this Court with this appeal.

4. We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and also perused the records, carefully.

5. This is a case based on circumstantial evidence. The first and the foremost circumstance projected by the prosecution is that the deceased was lastly seen alive at 07.15 a.m. on 09.04.2011. This fact has been spoken by P.W.1 and other family members of the deceased and there is no denial of this fact.

6. The next circumstance is that the deceased would have in the normal course returned home at 09.00 a.m. Having waited till 12.00 noon, P.W.1 and others went in search of the deceased and found the dead body of the deceased near a bush in the field. According to the medical evidence, the deceased had died due to shock and hemorrhage due to the injuries found on the body of the deceased. From this evidence, the prosecution has established that the deceased had died a homicidal death before 12.00 noon on 09.04.2011.

7. Now the question is, who is the perpetrator of the crime. In order to prove the case, the prosecution has not let in any eyewitness account. There is no evidence that the accused was seen anywhere near the place of occurrence at about the time of occurrence either alone or with the deceased. There is also no evidence that the deceased was found alive anywhere near the place of occurrence. There is evidence only to prove the fact that the dead body alone was found near the bush. According to the case of the prosecution, the accused was arrested on 24.04.2011 at 01.00 p.m. in the presence of P.W.11 and another witness. It is alleged that on such arrest, he made a voluntary disclosure statement, in which, he disclosed that he had pledged a gold thali and a pair of gold ear studs at the jewelry shop owned by P.W.12.

8. The learned counsel for the appellant would submit that this story of the prosecution cannot be true because the accused had already been taken into custody by the police and he was in illegal detention. In order to prove this fact, the learned counsel has taken us through the evidence of P.W.1. P.W.1 during cross examination has stated that three days before he was produced before the Court, the accused was taken by the police from his house and kept in the police station. P.W.4 has stated that on the day when the dead body was found, the accused was taken to the police station at around 07.00 p.m. by the police and he was detained. He has further stated that the accused was interrogated by the police. From these evidences, as pointed out by the learned counsel for the appellant, the defence has proved that the accused was in the police custody even before 24.04.2011 and therefore the allegation that he was arrested only on 24.04.2011 and M.Os.3 and 4 were recovered on his disclosure statement cannot be believed.

9. Above all, there is no proof that M.Os.3 and 4 were lastly worn by the deceased. None of the family members including P.W.1 has identified M.Os.3 and 4 as the jewels worn by the deceased. M.Os.3 and 4 have been marked only through P.W.11, to the effect that they were recovered from P.W.12. Assuming that these jewels were recovered from P.W.12, as it is stated by P.Ws.11 and 19, in the absence of any evidence that these two jewels were worn by the deceased lastly, the alleged disclosure statement made by the accused itself becomes inadmissible.

10. The learned counsel for the appellant would submit that the story of jewels was found missing from the dead body cannot be true. P.W.12, has stated that the accused once came and pledged M.Os.3 and 4, he is a licensed pawn broker, but no record whatsoever like the original ledger, pawn receipt or the bill book have been produced. He has admitted during cross examination that he made record of the pledging of M.Os.3 and 4, but no such record has been produced. The suppression of the same also creates doubt in the case of the prosecution.

11. The learned counsel for the appellant has pointed out that though the dead body was found at 12.00 noon, the complaint was made only at 08.00 p.m. and the same reached the hands of the learned Magistrate only at 09.45 p.m. The learned counsel further submitted that this delay has not been explained at all.

12. We have considered the above submission meticulously. As found in Ex.P8, the distance between the place of occurrence and the police station is hardly 10 kilometers. But there is no explanation as to why it took eight hours for P.W.1 to make the complaint. Further, there is no explanation as to why it took further time to reach the hands of the learned Magistrate. This delay also creates doubt in the case of the prosecution. At any rate, since the only piece of evidence that M.Os.3 and 4 were recovered on the alleged disclosure statement made by the accused, which was found to be unbelievable, the appellant is entitled for acquittal as there is no other evidence available against him.

13. In the result,

(i) The appeal is allowed, the conviction and sentence imposed on the appellant by the learned Sessions Judge, Mahalir Fast track Court, Dharmapuri in S.C.No.94 of 2014 dated 19.02.2016 is set aside and he is acquitted.

(ii) The fine amount, if any paid, shall be refunded to him.

(iii) The bail bond, if any executed, by him, shall stand discharged.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Sessions Judge
Mahalir Fast Track Court,
Dharmapuri

2.The Judicial Mgistrate
Pennagaram

3.-do- Thro The Chief Judicial Magistrate
Dharmapuri

4.The Inspector of Police
Hogenakkal Police Station
Dharmapuri District

5.The Superintendent Central Prison Vellore

6.The District Collector
Vellore

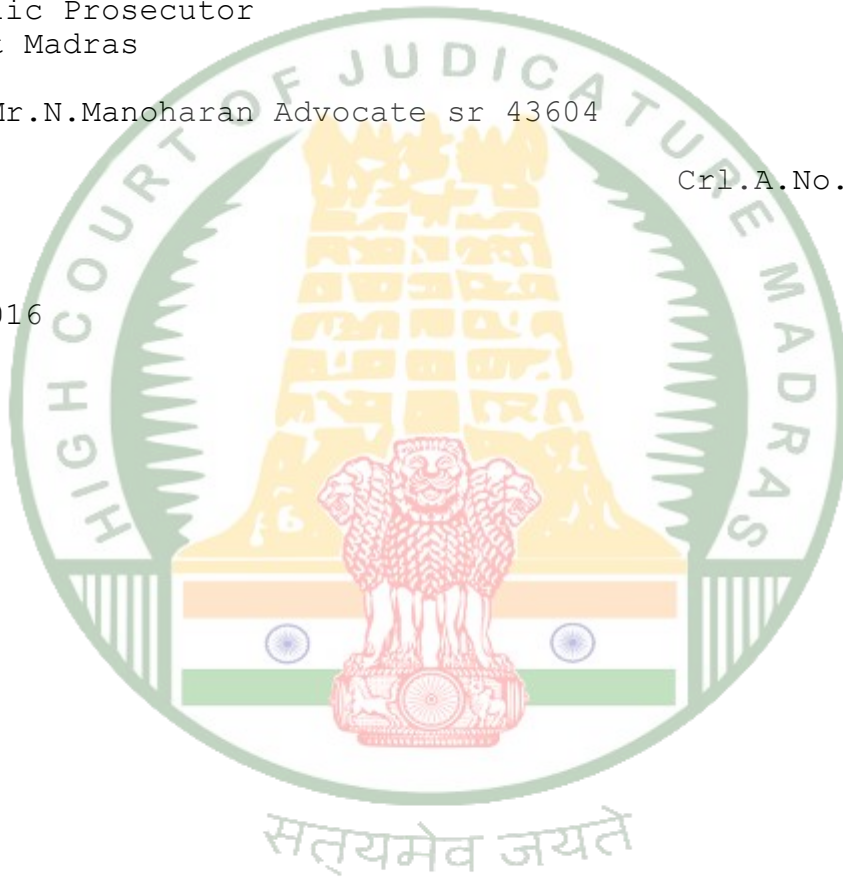
7.The Director General of Police
Mylapore Chennai

8.The Public Prosecutor
High Court Madras

+1 cc to Mr.N.Manoharan Advocate sr 43604

Crl.A.No.174 of 2016

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